

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Telecommunications Relay Services)	CC Docket No. 98-67
And Speech-to-Speech Services for)	
Individuals with Hearing and Speech)	
Disabilities)	

To: The Commission

**APPLICATION FOR REVIEW OF THE
NATIONAL VIDEO RELAY SERVICE COALITION**

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SUMMARY

The National Video Relay Service Coalition (the “Coalition”) is asking the Commission to reverse the June 30, 2004 decision of the Consumer & Government Affairs Bureau (the “Bureau”) which reduces the interim reimbursement rate for Video Relay Service (“VRS”) to \$7.293 per minute. The Coalition is seeking a return to the \$8.854 per minute interim rate set by the Commission only 20 days earlier.

The Coalition is concerned that the reduced interim VRS reimbursement rate will result in further deterioration in the availability and quality of VRS, thereby reducing access by the deaf and hard of hearing communities to what is now known as a near-functional equivalent telecommunications service.

Section 225 of the Communications Act requires that Telephone Relay Services (“TRS”) be offered and that the Commission encourage the use of existing technology and not discourage or impair the development of improved technology. Because VRS is a relatively new technology that provides a form of TRS that is closer to functional equivalency than traditional TRS, Section 225 of the Act prohibits the Commission from discouraging or impairing the development of VRS, notwithstanding the fact that VRS is not a mandated service at this time. Since a reduction in the interim VRS compensation rate is likely to lead to additional deterioration in the availability and quality of VRS, the Bureau’s action will discourage the use of existing technology and impair the development of improved technology in violation of Section 225.

The Bureau failed to properly consider the effect of the rate reduction on the deaf and hard of hearing communities. People who are deaf or hard of hearing rely upon VRS to communicate with hearing persons as part of their daily business and personal lives. Moreover, the Bureau approved the reduced reimbursement rate notwithstanding the fact that it was flawed even under the formula adopted by the Commission, because the rate of return was not based upon actual investment data and certain disallowances were still subject to review.

The Bureau did not have to hide behind a strict application of the mathematical formula ratified by the Commission. If the Bureau did not believe that it had the delegated authority to reject the reduced interim VRS reimbursement rate proposed by the National Exchange Carrier Association (“NECA”), it could have certified the matter to the Commission for action so that the Commission could have had an opportunity to comply with Section 225 of the Communications Act and to satisfy the public interest by making a decision that took into account the pressing needs of the deaf and hard of hearing communities by maintaining the earlier interim VRS reimbursement rate until the Commission had an opportunity to examine the entire VRS reimbursement rate structure.

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The National Video Relay Service Coalition (the “Coalition”), pursuant to Section 1.115 of the Commission’s Rules,¹ hereby files an Application for Review of the Order of the Chief, Consumer & Government Affairs Bureau (the “Bureau”), DA 04-1999, released June 30, 2004 (“*Bureau 2004 Reimbursement Order*”) in the captioned proceeding. The Coalition seeks review and reversal of the Bureau’s decision to decrease the interim reimbursement rate for Video Relay Service (“VRS”) to \$7.293 per minute commencing July 1, 2004 and requests a return to the \$8.854 per minute rate set by the Commission on June 10, 2004.² The Coalition is simultaneously filing a Petition for Emergency Stay of the Bureau’s Order.

Since several members of the Coalition, including Telecommunications for the Deaf, Inc. (“TDI”), the Deaf and Hard of Hearing Advocacy Network (“DHHCAN”), the National Association of the Deaf (“NAD”), and the Association of Late Deafened Adults, Inc. (“ALDA”),

¹ 47 C.F.R. § 1.115.

² *Telecommunications Relay Services*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, CC Docket No. 90-571 *et al.*, FCC 04-137, released June 30, 2004 (“*2004 TRS Report & Order*”). The interim rate was set retroactively to September 1, 2003.

previously filed comments regarding the proposed interim reimbursement rate,³ the Coalition qualifies as an aggrieved party pursuant to Section 1.115(a) of the rules.⁴

The Coalition is concerned that the newly established rate for VRS will lead to yet further reductions in the availability and quality of VRS, and thereby reductions in access to what is now known as a near-functional equivalent telecommunications service. As discussed herein, the new interim rate is even lower than the reimbursement rate of \$7.751 per minute set on June 30, 2003,⁵ which has already resulted in service that is of a lower quality and is less available than the level of service provided prior to June of 2003. The Coalition does not want to see the benefits of VRS further hindered at a time when consumers and businesses were just starting to experience those benefits.

The Coalition urges the Commission to focus on the needs of those consumers and businesses that will be directly affected by the Commission's decision in this proceeding. As discussed below, if the Commission considers the significant adverse impact of the *Bureau 2004 Reimbursement Order* on the TRS user community as well as the resulting inconsistency of the *Bureau 2004 Reimbursement Order* with the requirements of Section 225 of the Communications Act of 1934, as amended (the "Act"), it will see that the only legal and rational decision is to continue the interim rate of \$8.854 per minute established in the *2004 TRS Report & Order* pending Commission action on the VRS issues currently under consideration in the Further Notice of Proposed Rulemaking section of the *2004 TRS Report & Order*.

³ See, e.g., Comments of Telecommunications for the Deaf, Inc., filed May 24, 2004; see also Coalition *Ex Parte* Letter, filed June 24, 2004.

⁴ 47 C.F.R. § 1.115(a).

⁵ *Telecommunications Relay Services*, Order, CC Docket 98-67, DA 03-2111, released June 30, 2003 ("*Bureau 2003 Reimbursement Order*").

I. THE MEMBER ORGANIZATIONS

The National Video Relay Service Coalition is an *ad hoc* group that includes the following organizations: Telecommunications for the Deaf, Inc. (“TDI”), Deaf and Hard of Hearing Consumer Advocacy Network (“DHHCAN”), National Association of the Deaf (“NAD”), and The Association for Late Deafened Adults (“ALDA”), the American Association of People with Disabilities (“AAPD”), Deaf and Hard of Hearing in Government (“DHHIG”), the California Coalition of Agencies Serving the Deaf and Hard of Hearing (“CCASDHH”), the Student Body Government of Gallaudet University (“SBG”), and the Registry of Interpreters for the Deaf, Inc. (“RID”).

TDI is a national advocacy organization that seeks to promote equal access issues in telecommunications and media for the 28 million Americans who are deaf, hard-of-hearing, late-deafened, or deaf-blind so that they may attain the opportunities and benefits of the telecommunications revolution to which they are entitled.⁶ TDI believes that only by ensuring equal access for all Americans will society benefit from the myriad skills and talents of persons with disabilities.

⁶ TDI educates and encourages consumer involvement regarding legal rights to telecommunications accessibility; provides technical assistance and consultation to industry, associations, and individuals; encourages accessible applications of existing and emerging telecommunications and media technologies in all sectors of the community; advises on and promotes the uniformity of standards for telecommunications technologies; works in collaboration with other disability organizations, government, industry, and academia; develops and advocates national policies that support accessibility issues; and publishes “The GA-SK” quarterly news magazine and the annual *Blue Book, TDI National Directory & Resource Guide for Equal Access in Telecommunications and Media for People Who Are Deaf, Late-Deafened, Hard-of-Hearing or Deaf-Blind*.

DHHCAN, established in 1993, serves as the national coalition of organizations⁷ representing the interests of deaf and/or hard of hearing citizens in public policy and legislative issues relating to rights, quality of life, equal access, and self-representation. DHHCAN also provides a forum for proactive discussion on issues of importance and movement toward universal, barrier-free access with emphasis on quality, certification, and standards.

Established in 1880, the NAD is the nation's oldest and largest constituency organization safeguarding the accessibility and civil rights of 28 million deaf, hard of hearing, late deafened, and deaf-blind Americans in a variety of areas, including education, employment, health care, and telecommunications. A private, non-profit organization, the NAD is a dynamic federation of state associations and organizational affiliates and direct members. Primary areas of focus include grassroots advocacy and empowerment, captioned media, deafness-related information and publications, legal rights technical assistance, policy development and research, and youth leadership development. The NAD works closely with deafness related national organizations and is a member of several coalitions representing the interests of deaf, hard of hearing, late deafened, and deaf-blind individuals.

AAPD is a national non-profit membership organization promoting political and economic empowerment for all children and adults with all types of disabilities. AAPD has a

⁷ The member organizations of DHHCAN include the American Association of the Deaf-Blind (AADB), the American Deafness and Rehabilitation Association (ADARA), the Association of Late-Deafened Adults (ALDA), the American Society for Deaf Children (ASDC), the Conference of Educational Administrators of Schools and Programs for the Deaf (CEASD), Communication Service for the Deaf (CSD), Deaf Seniors of America (DSA), Gallaudet University, Gallaudet University Alumni Association (GUAA), Jewish Deaf Congress (JDC), National Association of the Deaf (NAD), National Black Deaf Advocates (NBDA), National Catholic Office of the Deaf (NCOD), Registry of Interpreters for the Deaf (RID), Telecommunications for the Deaf Inc.(TDI), USA Deaf Sports Federation (USADSF), and The Caption Center/WGBH.

strong interest in accessible communications so that people with disabilities can participate fully in all aspects of society.

Formed in Chicago, Illinois in 1987, ALDA works collaboratively with other organizations around the world serving the needs of late-deafened people. Through its chapters and groups around the country, ALDA promotes public and private programs designed to alleviate the problems of late-deafness and for reintegrating late-deafened adults into all aspects of society. ALDA also provides educational information concerning issues affecting late-deafened adults, as well as advocacy on behalf of, and support for, late-deafened adults and their families and friends.

DHHIG is a national nonprofit organization addressing the needs and concerns of deaf and hard of hearing Government employees. Its purpose is to support full communication access, advancement, and retention of deaf and hard of hearing employees in Government, and dismantling communication barriers in the workplace.

CCASDHH was established in 1988 and incorporated as a nonprofit statewide membership organization. Its members include eight nonprofit community-based organizations providing various social services “of by and for” deaf and hard-of-hearing Californians -- NorCal Center on Deafness; Greater Los Angeles Agency on Deafness; Deaf Counseling, Advocacy and Referral Agency; Deaf Community Services of San Diego; Deaf and Hard of Hearing Services; Center on Deafness: Inland Empire; Orange County Deaf Equal Access Foundation and Tri-County GLAD; and the California Association of the Deaf, a statewide membership organization representing deaf and hard-of-hearing consumers.

On an annual basis, CCASDHH’s member agencies ensure that a variety of social services are available serving over 300,000 deaf and hard of hearing individuals regardless of

where they live throughout all 58 counties in California. Through its member agencies' diverse workforce, including Native American, Hispanic, Asian, Russian, Hmong, and African-American individuals who are deaf or hard of hearing, CCASDHH works hard to improve the quality of lives of Californians who are deaf or hard of hearing and who otherwise would not have full access to such services as telecommunications, education, certified sign language interpreters, parent-to-parent support for newborns identified with a hearing loss, literacy, employment development, and advocacy. Member agencies and the California Association of the Deaf were the primary forces in state legislation that established the TTY equipment distribution program and the California Relay Service, long before the Americans with Disabilities Act was passed. As direct service providers, CCASDHH member agencies have the pulse of the community they serve to best determine needs and priorities.

SBG, Gallaudet University was established in 1948. Even though there were other organizations that provided numerous opportunities for leadership, personal growth and development, and fellowship for the Gallaudet student body, there was still a need for a single venue from which the students can formally maintain relations with the University administration. Thus, SBG was established as a representative group to advocate for campus policy changes. Structured via three functional branches - executive, judicial, and legislative, the SBG remains a strong entity on campus with biweekly Student Congress meetings and daily Executive Branch and Judicial Branch operations. Their past achievements include the successful Deaf President Now movement in 1988, management changes in the student infirmary, protests for better TV and movie captioning, and the establishment of the Rathskellar/Abbey.

The philosophy of RID is that excellence in the delivery of interpretation and transliteration services among people who are Deaf or Hard of Hearing and people who are hearing will ensure effective communication. As the professional association for interpreters and transliterators, the RID serves as an essential arena for its members in their pursuit of excellence.

II. QUESTIONS PRESENTED

Whether the *Bureau 2004 Reimbursement Order*, which reduced the interim reimbursement rate for VRS from \$8.854 per minute to \$7.293 per minute was in violation of Section 225(d)(2) of the Act,⁸ which requires the Commission to encourage the use of existing technology and not discourage or impair the development of improved technology.

Whether the *Bureau 2004 Reimbursement Order*, which concluded that the earlier reduction of the reimbursement rate for VRS from \$17.044 per minute to \$7.751 per minute did not have an adverse impact on the availability and quality of VRS, failed to properly consider record evidence to the contrary.

Whether the *Bureau 2004 Reimbursement Order* should be rescinded, which would result in reinstatement of the VRS interim reimbursement rate of \$8.854 per minute set by the Commission in its *2004 TRS Report & Order*.

III. DISCUSSION

A. The Bureau's Action Violated Section 225 of the Act

In 1990, Congress enacted the Americans with Disabilities Act (the "ADA").⁹ The main purpose of the ADA was to facilitate the integration of people with physical and other challenges into the mainstream of society so that no person would be left behind. As Thomas Jefferson wrote over two and a quarter centuries ago when drafting the *Declaration of Independence*:

⁸ 47 U.S.C. § 225(d)(2).

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

Title IV of the ADA addresses access to telecommunications by deaf and hard of hearing persons. Section 401 of Title IV, which was codified in Section 225 of the Act,¹⁰ requires that Telephone Relay Services (“TRS”) be offered. It states in part:

The Commission shall ensure that regulations prescribed to implement this section encourage, consistent with Section 7(a) of this Act, the use of existing technology and do not discourage or impair the development of improved technology.¹¹

In other words, the ADA not only requires the Commission to “encourage . . . the use of existing technology,” but equally important, the Commission may not “discourage or impair the development of improved technology.”¹² Because VRS is a relatively new technology that provides a form of TRS that is closer to functional equivalency than traditional TRS, Section 225 of the Act prohibits the Commission from discouraging or impairing the development of VRS, notwithstanding the fact that VRS is not a mandated service at this time.

Against the Congressional mandate established by the ADA, the Bureau considered the VRS reimbursement rate of \$7.293 per minute proposed by the National Exchange Carrier Association (“NECA”). Without taking into account the adverse impact that a further VRS rate reduction would have on the deaf and hard of hearing communities, the Bureau determined that NECA properly applied the formula established in the *Bureau 2003 Reimbursement Order* as ratified by the Commission in the *2004 TRS Report & Order*. The Bureau did find that NECA failed to include an 11.25% rate of return on investment as required in the *2004 TRS Report &*

⁹ PL 101-336, July 26, 1990.

¹⁰ 47 U.S.C. § 225.

¹¹ 47 U.S.C. § 225(d)(2).

Order and did recognize that carriers may seek review of certain disallowances. Thus, the Bureau's decision regarding the \$7.293 per minute VRS reimbursement rate is subject to "any supplemental cost data relating to investment and possible review of specific disallowances."¹³ However, the Bureau did not provide any instruction on what this supplemental data should contain, and service providers are still awaiting instruction.

As mentioned, the Bureau did not consider the adverse impact that a rate reduction from \$8.854 per minute to \$7.293 per minute would have on the deaf and hard of hearing population. Instead, the Bureau hid behind a mechanical application of the formula established a year earlier and ratified by the Commission. The Bureau approved the NECA proposal notwithstanding the fact that the proposal was flawed even under the adopted formula because rate of return was not calculated based upon actual investment data and certain disallowances were still subject to review. Equally important, because the NECA collection of cost data from the VRS vendors was based upon the Commission's improperly restrictive guidelines,¹⁴ the VRS vendors may not have submitted cost information on research and development, recruitment and training of interpreters, and financial management activities such as annual audits. As discussed below, notwithstanding the *2004 TRS Report & Order*, failure on the part of NECA and the Bureau to include these reasonable and prudent costs was a violation of Section 225(d)(2) of the Act,

¹² *Id.* See also *2004 TRS Report & Order* at para. 4.

¹³ *Bureau 2004 Reimbursement Order* at para. 50.

¹⁴ The radical reduction of more than 50 percent in the VRS reimbursement rate resulting from the *Bureau 2003 Reimbursement Order*, which was enacted at the very last minute without a reasoned explanation, demonstrates that something is not right with the methodology used by the Bureau. Considering also that the Commission is seeking comment on the cost methodology for determining future reimbursement rates for VRS, see *2004 TRS Report and Order* at paras. 234-240, it appears that the Commission may have concerns for the cost methodology being used to establish VRS reimbursement rates.

because failure to fully reimburse VRS vendors for their costs does not encourage the use of existing technology and discourages the development of improved technology.¹⁵

The Bureau did not have to hide behind the much overused excuse that it was only following orders. The Bureau should have maintained the *status quo* and left in place the \$8.854 per minute rate adopted only 20 days earlier by the Commission while the Bureau was still considering the investment data and the challenges to the exclusions. Alternatively, the Bureau could have considered the deterioration of VRS, including reduction in available service and longer response time,¹⁶ that would result from an additional rate reduction and its adverse impact on the lives of deaf and hard of hearing persons. The Bureau could have concluded that any further rate reduction would violate Section 225 of the Act because such reduction would limit “the use of existing technology” and “impair the development of improved technology”¹⁷ and could have concluded that the only way to comply with Section 225 of the Act would be to maintain in effect the Commission’s interim VRS compensation rate of \$8.854 per minute while the Commission was reexamining the entire VRS compensation structure.¹⁸ Although the Bureau may not have had the delegated authority to change the formula for calculating the VRS reimbursement rate,¹⁹ it could have on its own motion certified the question to the Commission for action and provided the Commission an opportunity to comply with Section 225 of the Act.

¹⁵ See 47 U.S.C. § 225(d)(2).

¹⁶ See subsection C, *infra*.

¹⁷ 47 U.S.C. § 225(d)(2).

¹⁸ See 2004 TRS Report & Order at paras. 234-249.

¹⁹ Although the Bureau had no qualms about changing the method for determining the VRS compensation rate when it drastically reduced the rate in the *Bureau 2003 Reimbursement Order*.

B. The Public Interest Need for Reliable VRS

A critical aspect of equal access to telecommunications is the ability to utilize new and innovative technologies that better enable individuals who are deaf or hard of hearing to communicate with family, friends, employers, co-workers, and others. VRS, like any other TRS service feature, is equally important to the rest of the general mainstream to use to contact people who are deaf or hard of hearing. It is an equal access service that can benefit any individual or entity in America. VRS makes relay services closer to being functionally equivalent to conventional telephone services for individuals who use sign language. It is a relay service for sign language users that provides the hearing party with native spoken English interpretation in real time, whereas this might not be entirely possible using other TRS services. It enables these individuals and groups to take advantage of the opportunities provided by such functional equivalency. Unlike traditional TTY TRS and Internet Protocol TRS, VRS provides individuals who are deaf or hard of hearing and their contacts with the ability to communicate in near real-time with greater accuracy.²⁰ VRS enables these individuals to take advantage of highly-qualified interpreters with extensive experience in the deaf community, including deep understanding of Deaf Culture and other norms and higher level of skills maintenance with professional interpreting associations.

Relay services, including in particular VRS, must be readily available on-demand and must provide the ability for people who are deaf or hard of hearing and their contacts to communicate spontaneously and accurately. In addition, it is important to ensure that VRS providers are given the flexibility and the ability to develop new products and technologies such as video mail to better “bridge the gap between the communication-impaired telephone user and

²⁰ See, e.g., CCASDH, *Petition for Rulemaking*, June 27, 2004, at 5-7.

the community at large.”²¹ Reasonable VRS provider compensation rates are essential to reinstate the continued viability of this critical service.

VRS enables persons who are deaf or hard of hearing and their contacts to retain the quality of real-time, accurate communication not possible with traditional relay services or TTY. Without VRS, these individuals and businesses are hampered by the delays and inaccuracies inherent with TTY and Internet Protocol TRS, which rely upon an operator to voice the typewritten messages of a person who is deaf or hard of hearing and type the responses of the person on the other end of the call. The need to manually type conversations creates lags and delays in flow of conversation and impedes the ability of the TRS user and his or her contact to communicate real-time. These delays, as well as the unfamiliarity of the general mainstream with these services make it difficult for people who are deaf or hard of hearing to communicate effectively with those in the general mainstream. Even if a person from the general mainstream has heard of these services, they may not be familiar with how the services work and may mistake a traditional TRS call for a telemarketing call. Therefore, often there may be surprise or uncertainty encountered by a hearing person when receiving calls from a person using this equipment. Indeed, as the Commission noted, many people who are not familiar with or do not understand TRS hang up on callers utilizing such services.²² This type of mistaken reaction by a hearing person unfamiliar with traditional TRS can be humiliating to a TRS user who is deaf or hard of hearing.

²¹ *Bureau 2003 Reimbursement Order at para. 2.*

²² *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-67, FCC 00-56, released March 6, 2000, at para. 104 (“*2000 TRS Report & Order*”).

VRS avoids all of these problems by enabling people who are deaf or hard of hearing and their contacts to communicate in near real-time. Because a VRS user is able to see and be seen by an interpreter fluent in sign language, the user is able to see what the speaking party is saying at the same time that person is speaking and immediately respond. In addition, when the VRS user initiates communication or responds to the speaking party, the sign language-fluent interpreter is able to begin translating for the speaking person immediately rather than asynchronously which is necessary for traditional TRS because typing is by its very nature much slower than voice speaking or sign language. As a result, there is minimal to no delay and much greater accuracy in communication and conveyance of language nuances. In fact, to both parties on the call, it appears as if they are conversing with another person in their native language.²³

Moreover, because VRS provides TRS users with experiences that are much closer to the functional equivalent of voice telephone service to the general mainstream, VRS gives these individuals the opportunity to better communicate with friends, family, employers, prospective clients and public health and safety organizations. The over four hundred comments filed in this docket prior to the *Bureau 2004 Reimbursement Order* represents only a fraction of the many people who are currently using VRS to improve the quality of their lives.

C. Detrimental Effects on the Quality and Availability of Service

Since last year's rate reduction for VRS, the Coalition members and their constituents have seen a severe reduction in the quality and availability of service. These reductions have already had detrimental effects on the consumers and businesses that rely on this service. In particular, the reductions have curtailed the ability of people who are deaf or hard of hearing and

²³ Many people who are deaf or hard of hearing are often more fluent in sign language than in English because they speak in sign language on a daily basis. Therefore, VRS makes it possible for a hearing person and a person who is deaf or hard of hearing to have a conversation using the language where each has the greatest fluency.

their contacts to take advantage of the opportunities and benefits afforded by equal access to the telecommunications revolution.

Unfortunately, the *Bureau 2004 Reimbursement Order* specifically ruled that the arguments raised by over four hundred commenters,²⁴ including many of the members of the Coalition and their constituents, who complained to the Commission that the quality of VRS has significantly deteriorated over the past year as a result of the drastic rate reduction imposed by the *Bureau 2003 Reimbursement Order* were not relevant to the Bureau's decision to set VRS reimbursement rates. The Bureau stated:

[C]ommenters' concerns directed at quality of service issues are not relevant here. In addition, the Further Notice of Proposed Rulemaking to the *2004 TRS Report & Order* raises issues with regard to VRS concerning speed of answer and whether the service should be mandatory and required to be offered 24/7. That proceeding is the appropriate one in which concerns over issues such as speed of answer, or other "quality" issues, should be directed.²⁵

Notwithstanding the above ruling, the Bureau went on to specifically reject the arguments raised by the many commenters complaining about the degradation in the quality of VRS:

[T]he longer wait times in reaching a VRS CA that some consumers have experienced is, more than anything, likely the result of supply and demand. As noted above, from April 2002 to April 2004 the minutes of use of VRS grew 25-fold, and even in the past year the minutes of VRS usage have increased more than four-fold (from, *e.g.*, 171,124 minutes per month in April 2003 to 722,863 minutes per month in April 2004). VRS providers, therefore, have had to quickly attempt to hire a large number of qualified interpreters to handle the demand.²⁶

We also note, as the *2004 TRS Report & Order* reflects, that VRS has flourished in the past year, notwithstanding the 2003-2004 interim compensation rates of \$7.751 per minute. That fact belies the suggestion that the compensation rate is the determining factor to service issues, including quality issues.²⁷

²⁴ *Bureau 2004 Reimbursement Order* at para. 29

²⁵ *Id.* at para. 46 (footnotes omitted).

²⁶ *Id.* at para. 46 n.117.

²⁷ *Id.* at para. 46 (footnotes omitted).

The problem with the Bureau's conclusions is that they run contrary to the very record evidence cited by the Bureau. For example, the Bureau concludes that the rapid growth of VRS is the reason for deterioration in service. However, the Bureau cites to an overall 25-fold increase in minutes of usage from April 2002 to April 2004 and specifies that the increase from April 2003 to April 2004 was four-fold. Therefore, the more rapid rate of growth in VRS usage was during the April 2002 to April 2003 time period when consumers were satisfied with the quality of VRS service. Consumers experienced the deterioration in availability and quality of service after the reimbursement rate decrease imposed by the *Bureau 2003 Reimbursement Order*, when the rate of growth slowed down to a four-fold increase. In other words, prior to the 2003 reduction in the VRS reimbursement rate, VRS providers were able to rapidly expand and still maintain availability and quality of service. After the 2003 reduction in the VRS reimbursement rate, VRS continued to expand, but the availability and quality of service deteriorated. Since the deterioration of service availability and quality did not correlate with the rate of VRS growth, contrary to the Bureau's assertion, the growth of VRS could not have been the factor that caused the problems experienced by consumers. It had to have been the drastic reduction in the reimbursement rate—there is nothing in the record that would suggest that some factor other than the reimbursement rate could possibly cause the negative change in service availability and quality.

The Bureau also contends that VRS has flourished notwithstanding the reduction in the reimbursement rate. Again the Bureau ignores the record evidence. Coalition members and their numerous constituents complained to the Bureau that they enjoyed the benefits of VRS, but were unhappy with the deterioration of its availability and quality. After all, it is not uncommon for consumers to purchase a product that they need, even if the quality of the product is not

satisfactory, because with certain products, having an inferior product is better than having no product at all. The fact that VRS has grown notwithstanding the reduction in availability and quality is testament to the critical need for the deaf and hard of hearing population to have the form of relay service that comes closest to functional equivalency, even though its availability and quality are substandard. The Coalition would submit that had VRS been available on a 24/7 basis during the past year, its greater availability would have permitted it to have grown more rapidly than it did.

Prior to last year's rate reductions, consumers expected VRS services to be available on demand, in much the same way that voice telephone consumers expect to be able to pick up the telephone and be able to communicate instantly with other voice telephone consumers. In order to achieve close to functional equivalency, VRS providers were answering VRS calls at the same speed as traditional TRS calls. In addition, consumers expected that the interpreter they reached would be able to handle a variety of calls with a variety of different purposes and callers with a variety of different needs. Unfortunately, consumers of VRS have experienced a significant reduction in service quality and availability in response to the *Bureau 2003 Reimbursement Order* slashing the reimbursement rate. VRS providers have reduced their hours of operation,²⁸ and consumers often experience lengthy answer time delays,²⁹ with wait times as long as 20-30

²⁸ See, e.g., Hands On Video Relay Services, Inc., Comments on Payment Formula and Fund Size Estimate for the Interstate TRS Fund for 2004-05; Request for Full Commission Action; and Request for Designation of Evidentiary Hearing, May 24, 2004, at 3-5 ("HOVRS Comments"); Communication Service for the Deaf, Inc., Comments of CSD on Payment Formula and Fund Size Estimate Interstate TRS Fund for July 2004 through June 2005, May 19, 2004, at 9 ("CSD Comments"); Comments of Hamilton Relay, Inc., May 24, 2004, at 6-7; AT&T Comments, May 24, 2004, at 3; Sprint Corporation, Petition for Reconsideration, July 30, 2003, at 17 (Sprint Reconsideration); CSD of Texas Open Letter to Consumer Leaders, dated July 17, 2003, at 3 ("CSD Letter").

²⁹ See, e.g., HOVRS Comments at 9-11; CSD Comments at 9; Sprint Reconsideration at 17.

minutes.³⁰

Because of the locations of many VRS providers, consumers in different parts of the country have had to adjust their daily schedule in order to utilize the benefits of VRS. For example, when VRS was available 24/7, a consumer in Hawaii wishing to contact someone on the east coast of the U.S. could call at a mutually convenient time for the two parties. Now, this person in Hawaii may need to get up in the middle of the night in order to utilize a VRS service. In addition, because of the reduced reimbursement rate, VRS providers are unable to hire and train new qualified interpreters to meet the highly specialized skill set required for VRS services.³¹ This reduction in hiring and training of interpreters has likewise lengthened call hold times and otherwise degraded the quality of VRS service to consumers. This level of service is no longer functionally equivalent; it is disruptive, discriminatory, and decreases rather than improves the quality of life of people who are deaf or hard of hearing.

VRS interpreters do not know in advance the kinds of calls they will receive or what specialized interpretation the caller may require (e.g., highly technical or unique industries with specialized, technical terms).³² Ideally, VRS providers must not only retain highly-qualified interpreters who can respond to any type of call they may receive, but they must have a sufficient number of such highly-qualified interpreters to ensure that callers are not subjected to long hold

³⁰ HOVRS Comments at 3, 9-11.

³¹ Sorenson Media, Inc. Petition for Reconsideration of the *Bureau 2003 Reimbursement Order*, at 3.

³² For example, it is unlikely that the average interpreter would be able to understand and interpret a detailed discussion of this very issue because of the unique, industry-specific technical terms involved. Therefore, a customer would have to specifically request an appropriately qualified interpreter. In contrast, *all* VRS interpreters must be able to understand and interpret, at least on a competent level, any type of call, including the example of a discussion of this very issue. Maintaining a sufficient number of such highly-qualified interpreters is significantly more costly than utilizing these professionals on an as-needed-basis.

times. Because it is costly to maintain a pool of highly-qualified interpreters during all hours of the day, the ability of VRS providers to make this service available has been substantially curtailed since the *Bureau 2003 Reimbursement Order*.

Further, in order to maintain the on demand nature of VRS, VRS providers must use extensive networking configurations to ensure the accurate and reliable distribution of VRS calls to call centers located throughout the country.³³ This technology is designed to assign incoming calls to the next available agent in an expeditious manner in order to answer each call in the shortest amount of time possible and reduce hold times. Similarly, VRS providers must have in place the technology necessary to enable compatibility with a wide variety of end user equipment, such as ISDN, IP, software applications, or unique hardware requirements.³⁴

D. Maintaining the Interim Reimbursement Rate Set by the Commission's 2004 TRS Report & Order on June 10, 2004

The Coalition requests that the Commission rescind the *Bureau 2004 Reimbursement Order* so that the reimbursement rate will revert back to the interim reimbursement rate of \$8.854 per minute previously set by the Commission on June 10, 2004 in the *2004 TRS Report & Order*. The Coalition further requests that this rate remain in effect until the Commission has completed its review of the VRS issues addressed in the Further Notice of Proposed Rulemaking and can set a reimbursement rate that complies with the new standards. The reason for these requests is simple. Any reduction in the VRS reimbursement rate below the \$8.854 per minute rate will result in a further deterioration of availability and quality of VRS and would impair access to functionally equivalent telecommunications services by persons who are deaf or hard of hearing. As discussed earlier, any Commission action likely to result in the deterioration and

³³ CSD Letter at 2.

³⁴ *Id.*

availability of VRS is a violation of Section 225 of the Act.

The Coalition emphasizes that VRS provides a unique service to the TRS user community that is critical to their ability to communicate accurately and effectively with other members of society. As the Commission noted, VRS “make[s] relay services functionally equivalent to conventional telephone services for individuals whose first language is American Sign Language [ASL].”³⁵ Therefore, it is imperative that VRS be readily available to people who are deaf or hard of hearing.

As discussed earlier, many VRS providers have reduced service availability in order to reduce their costs to a level consistent with the compensation rate set in the *Bureau 2003 Reimbursement Order*. This reduction in service has, in turn, dramatically reduced the availability and usefulness of VRS and the significant opportunities and benefits it brings to the deaf and hard of hearing communities. To make matters worse, the *Bureau 2004 Reimbursement Order* does not permit any reimbursement for *any* “engineering and research and development expenses (including software development) that go to service enhancements that go beyond the applicable (non-waived) mandatory minimum standards. . . .”³⁶ Although it would be appropriate for the Bureau to ensure that research and development expenses were limited to reasonable levels, without *any* research and development funding, VRS as a service will stagnate. It will not keep up with advances in technology, and the users of VRS will be technologically left behind. Notwithstanding the fact that the Bureau was simply following the Commission’s *2004 TRS Report & Order*, the Bureau’s decision, as well as the Commission’s order, violated Section 225 of the Act, which mandates that Commission regulations may not

³⁵ *2000 TRS Report & Order* at para. 23.

³⁶ *Bureau 2004 Reimbursement Order* at para. 31.

“discourage or impair the development of improved technology.”³⁷ The denial of reimbursement for *all* research and development stops the development of improved technology dead in its tracks.

III. CONCLUSION

Because of the substantial, unique benefits provided to the TRS user community by VRS, it is critically important that the Commission consider the effect on these individuals and their contacts when setting the VRS compensation rate. While at first glance, the determination of an appropriate rate may seem to be about cost estimates, depreciation allocation and profit margins, the true purpose behind those calculations is to ensure that a valuable segment of the population is not cut off from the benefits of a technology that will not only improve their quality of life, but will enable the rest of society, the business community, and the government to benefit from their contributions. Accordingly, the National Video Relay Service Coalition urges the Commission to (1) rescind the *Bureau 2004 Reimbursement Order* so that the reimbursement rate will revert back to the interim reimbursement rate of \$8.854 per minute previously set by the Commission on June 10, 2004 in the *2004 TRS Report & Order*; and (2) maintain the \$8.854 per minute rate until the Commission has completed its review of the VRS issues addressed in the Further Notice of Proposed Rulemaking and can set a reimbursement rate that complies with the new standards.

³⁷ 47 U.S.C. §225(d)(2).

Respectfully submitted,

/s/

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